IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18093 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAND\SING NATHABHAI GARASIYA - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR NILESH A PANDYA for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/09/2005

ORAL JUDGMENT

1.In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy

Collector, Chhota Udepur, Vadodara dated 14.11.1991 passed in SRD No.7/90 and also prayed to quash and set aside the order passed by the Collector, Vadodara dated 21.1.2004.

2. The dispute is with regard to the land bearing Survey No.32/2 admeasuring 1-Acre and 1-Guntha of land situated at village Raj Vasana, Taluka Jetpur Pavi. As the land in question was not cultivated and was kept as Padtar land, proceedings under Section 65 of the Bombay Tenancy and Agricultural Land Act, 1948 was initiated by the Deputy Collector, Chhota Udepura and the Deputy Collector, Chhota Udepur passed an order dated 14.11.1991 forfeiting the land to the State Government and directed to dispose of the land under Section 84(C)(4) of the Act. It appears from the record that the said order passed by the Deputy Collector, Chhota Udepur dated 14.11.1991 came to be challenged before the Collector, Vadodara in the year, 2003 i.e. after a period of 13 years and the Collector, Vadodara vide communication dated 21.1.2004 informed the petitioner that against the order passed by the Deputy Collector, Chhota Udepur passed under Section 65 of the Act, the appeal before the Collector, Vadodara is not

maintainable and therefore, the said appeal/application is rejected and ordered as 'to be filed'. Thereafter, the petitioner preferred the present Special Civil Application challenging the aforesaid two orders by filing a present Special Civil Application on 16.3.2005.

3. It is the contention on behalf of the petitioner that he is in possession of the land in question even today. However, no documentary evidence has been produced, much less, village form No.7/12 with regard to the land in question to show and establish that the petitioner is in possession of the land in question as alleged. It is required to be noted that the order came to be passed by the Deputy Collector, Chhota Udepur on 14.11.1991 disposing the land in question under Section 84(C)(4) of the Act, however, the same came to be challenged by the petitioner before Collector only in the year, 2003 i.e. after the period of 13 years and there is no explanation whatsoever why there is a delay on the part of the petitioner in preferring the appeal. It is also required to be noted that even the Collector, Vadodara informed the petitioner vide communication dated 21.1.2004 that appeal before the

Collector, Vadodara is not maintainable and petitioner can approach the Hon'ble High Court, still the petitioner has preferred the present Special Civil Application on 16.3.2005 i.e. after the period of 1 year and 2 months and for that also there is no explanation whatsoever why there is a delay in preferring the present Special Civil Application when the Collector, Vadodara informed the petitioner as far back as on January, 2004.

4. Under the circumstances, there is no substance in the present Special Civil Application as the order of year 1991 is challenged by the petitioner by way of present Special Civil Application in the year 2005 without there being any justifiable reason and the present Special Civil Application is required to be dismissed on the ground of delay and laches. It appears that the petitioner has deliberately suppressed the documents showing the possession as after the order passed by the Deputy Collector, Chhota Udepur dated 14.11.1991 and except some statements in the application that he is in possession of the land in question, there is no corresponding documentary evidence produced on record. Therefore, it cannot be said that the petitioner is in

possession of the land in question.

5.For the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed.

(M.R.SHAH, J.)

kdc.